

AMENDED IN ASSEMBLY JUNE 29, 2010

AMENDED IN ASSEMBLY JUNE 3, 2010

AMENDED IN SENATE MAY 12, 2010

AMENDED IN SENATE APRIL 22, 2010

AMENDED IN SENATE APRIL 13, 2010

AMENDED IN SENATE MARCH 25, 2010

## **SENATE BILL**

**No. 1188**

---

**Introduced by Senator Wright**

February 18, 2010

---

An act to add Section 3049 to the Family Code, relating to child custody.

### LEGISLATIVE COUNSEL'S DIGEST

SB 1188, as amended, Wright. Child custody: disabled parent.

Existing law requires a court to award custody of a child according to the best interest of the child, and further requires a court to grant reasonable visitation rights to a parent unless it is shown that the visitation would be detrimental to the best interest of the child. Existing law requires a court, when determining the best interest of the child, to consider the health, safety, and welfare of the child, among other factors.

*The California Supreme Court in In re Marriage of Carney (1979) 24 Cal.3d 725 determined that the mere fact of the disability of a parent is not a proper basis upon which to make a determination regarding custody or visitation without further inquiry, as specified.*

This bill would ~~provide that a parent's disability may not form the basis for an order granting child custody or visitation to another party,~~

~~or for an order imposing a condition or limitation on custody or visitation, as specified, unless there is a finding that an award of custody or visitation to, or a condition or limitation on custody or visitation by, the disabled parent would not be in the best interest of the child, as specified state the intent of the Legislature to codify the decision of the California Supreme Court described above with respect to custody and visitation determinations by the court involving a disabled parent.~~

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 3049 is added to the Family Code, to  
2     read:

3     3049. It is the intent of the Legislature in enacting this section  
4     to codify the decision of the California Supreme Court in *In re*  
5     *Marriage of Carney* (1979) 24 Cal.3d 725, with respect to custody  
6     and visitation determinations by the court involving a disabled  
7     parent.

8     ~~SECTION 1. Section 3049 is added to the Family Code, to~~  
9     ~~read:~~

10    ~~3049. (a) In any proceeding to determine child custody or~~  
11    ~~visitation under this part, in which at least one parent is disabled,~~  
12    ~~the disability of that parent may not form the basis for an order~~  
13    ~~granting custody or visitation to another party, or for an order for~~  
14    ~~imposing any condition or limitation on an award of custody to or~~  
15    ~~visitation by the disabled parent, unless there is a finding by the~~  
16    ~~court that a grant of custody or visitation to, or a condition or~~  
17    ~~limitation on custody or visitation by, the disabled parent would~~  
18    ~~not be in the best interest of the child. This section applies to any~~  
19    ~~proceeding regarding custody or visitation, including, but not~~  
20    ~~limited to, a request for a modification of an existing order for~~  
21    ~~custody or visitation.~~

22    ~~(b) For purposes of this section, “disability” means any mental~~  
23    ~~or physical disability as defined in Section 51 of the Civil Code~~  
24    ~~and Sections 12926 and 12926.1 of the Government Code.~~

1     ~~(e) It is the intent of the Legislature in enacting this section to~~  
2     ~~codify the full reasoning and holding of the Supreme Court in In~~  
3     ~~re Marriage of Carney (1979) 24 Cal.3d 725.~~

O